IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No.130 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

DILIPBHAI J. KINARIWALA

Appearance:

1. INCOME TAX APPLICATION No. 130 of 1998
MR MANISH R BHATT for ApplicantNo. 1
MRS SWATI SOPARKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 09/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. Heard Mr.M.R.Bhatt, learned Senior Standing

Counsel for the applicant - revenue and Mr.S.N.Soparkar, learned Senior Advocate for the respondent - assessee. In light of the order dated 22-03-2004 made in Review Petition Nos.1682-1737 of 2003 and Civil Appeal Nos.6148-6157 of 1998 and cognate matters by the Apex Court, the following questions of law arise out of the order of the Income Tax Appellate Tribunal.

"1. "Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the Commissioner of Income Tax (Appeal) directing the Assessing Officer to include only balance share i.e. after reducing the share which was alleged to be transferred to the family trust ?"

2. "Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeal) directing to exclude the income of the minor son under Section 64(1)(iii) of the Act ?"

3. "Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeal) deleting the inclusion of the income accrued of arisen to the BOIs from the total income of the assessee ?"

4. "Whether, the Appellate Tribunal ought not to have appreciated that the entire transaction was created with a sole view of evading due taxes ?"

2. Accordingly, the Tribunal is directed to draw up the statement of case and raise and refer the questions of law for the opinion of this Court. Rule made absolute.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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'Bhavesh'